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EAST BAY
MUNICIPAL UTILITY DISTRICT

DENNIS M. DIEMER
GENERAL MANAGER

September 22, 1999

Lester Snow, Executive Director
Attn: Rick Breitenbach, Assistant Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Dear Mr. Snow:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the CALFED Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft PEIS/R). This letter presents EBMUD's policy perspectives and specific technical comments on the CALFED Bay-Delta Program. Additionally, as part of the Ag-Urban process and as a member of the California Urban Water Association (CUWA), the Water Reuse Association of California, the Bay-Delta Urban Coalition, and the Bay Area Regional Water Recycling Program (BARWRP), EBMUD will also be contributing to comments submitted through these other stakeholder forums.

EBMUD commends CALFED on its accomplishments to date. EBMUD has actively supported CALFED in its efforts to develop a comprehensive program to resolve the Bay-Delta issues. Although CALFED has made significant progress, many important decisions remain. EBMUD is particularly concerned about the potential adverse effects on the Mokelumne River fishery from the proposed Hood Canal. The Phase II Report and Implementation Plan will need much more detail before stakeholders will be able to commit themselves to a solution. A key element that CALFED must clarify is how it proposes to assure regulatory certainty for water users, linked to a broadly supported Ecosystem Restoration program, by the time of the Record of Decision. In the face of these challenges, we remain committed to working with CALFED and other stakeholders to cooperatively develop a balanced, community-inclusive program that improves conditions in the Bay-Delta.

EBMUD's Stake in CALFED

While EBMUD does not divert water directly from the Delta, we have a stake in several CALFED programs that affect the implementation of EBMUD's integrated resources planning activities, and our investments in protecting the natural resources of the Bay-Delta watershed. Our Mokelumne Aqueducts cross the Delta to deliver high quality Sierra water to our 1.2 million customers in 20 cities and 15 unincorporated communities in Alameda and Contra Costa counties. Because EBMUD serves water from the Mokelumne River, an eastside tributary to the Delta, we have an interest in improving fishery conditions in the Delta, which serves as a migratory corridor for Mokelumne River fall-run chinook salmon and steelhead. EBMUD also

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understands that without an acceptable level of stability for the Bay-Delta – both physically and institutionally – it will be difficult to maintain high quality drinking water supplies to our customers and to protect environmental resources, especially in times of drought. As a Central Valley Project (CVP) contractor committed to utilizing its American River water contract supply in the near term, EBMUD understands the importance of an acceptable Bay-Delta solution.

EBMUD Shares CALFED's Commitment to Integrated Resources Planning

EBMUD continues to support the CALFED process to identify and implement a long-term solution for the problems of the Bay-Delta. In addition to support for levee maintenance and enhancement in the Delta and local watershed management, EBMUD has made significant contributions in water use efficiency and natural resource enhancement.

EBMUD's responsibilities to protect the Mokelumne River environment affect the amount of water available to the East Bay. In Amador, Calaveras, and San Joaquin counties, parties with water rights senior to EBMUD's also face growing needs for water. Virtually all of EBMUD's increased water needs projected over the next 20 years are a result of increased flows for senior water rights holders and for resource protection in the Mokelumne River and Bay-Delta system. The needs of new customers within EBMUD's ultimate service boundary are targeted to be almost entirely offset in normal years by water conservation and recycling projects.

EBMUD has already made significant progress in water use efficiency. Despite a 26% increase in the number of accounts serviced since 1968, EBMUD's total water consumption today remains within 5% of the water use in 1968. According to BMP implementation reports submitted to the California Urban Water Conservation Council (CUWCC), EBMUD invests more per capita in its water conservation program than any other large water agency in the state, and is a pioneer in water reclamation as well. EBMUD has invested heavily in protecting the Mokelumne River, and in restoring the salmon fishery. In fact, the Mokelumne is one of only three Central Valley streams that have achieved the goal of doubling the natural production of salmon. Specific actions committed to by EBMUD include:

- Fish hatchery improvements
- Gravel replenishment projects
- Mapping of fisheries and wildlife habitat
- Monitoring of salmonid migration and abundance
- Lower Mokelumne River Restoration River project with Army Corps
- Coalition building with local landowners and other stakeholders

In addition to the need for increased water supply reliability, EBMUD must maintain a high quality source to meet customer expectations and regulatory demand. With a high quality source, EBMUD is able to meet and exceed the increasingly stringent drinking water standards

set by USEPA and the California Department of Health Services without significant added treatment. This is critically important as California drinking water quality law sets a higher standard than federal law. Every water utility in California agrees that the highest quality water source reasonably available provides the safest end product for consumers.

EBMUD has implemented a program that balances the resource needs of restoring ecological health with improved water management in our service area. In October 1993, EBMUD adopted a long-range Water Supply Management Program. In implementing the following six elements of this comprehensive integrated resource plan, EBMUD has developed valuable partnerships with regional interests, regulatory agencies, and community groups:

Water Supply Improvements – Continuing work with Sacramento and San Joaquin counties, other water users, the USBR, and environmental interests to utilize EBMUD's American River contract entitlement and conveyance facilities as part of an effort to meet minimum water supply needs. EBMUD is also evaluating other concepts for water supply benefits to our customers, including the enlargement of EBMUD's existing Pardee Reservoir and the development of groundwater storage in San Joaquin County and our local service area.

Lower Mokelumne River Management – Entering into agreements with CDF&G, and the USFWS to sustain and enhance fishery resources on the Mokelumne River and Bay-Delta. In 1998, EBMUD and the resource agencies executed a Joint Settlement Agreement (JSA) to resolve the ongoing Mokelumne River regulatory proceedings. FERC's November 27, 1998 Order approved the Agreement and accordingly amended EBMUD's FERC license.

Water Reclamation – Partnering with the Bay Area Regional Water Recycling Program and developing joint projects with neighboring wastewater agencies (Dublin-San Ramon Services District, Central Contra Costa County Sanitary District, and West County Sanitary District) and local industries (Chevron, Unocal) to improve water use efficiency and supply reliability through water recycling and reuse.

Water Conservation – Implementing performance-based water conservation programs to encourage the most efficient and cost-effective use of EBMUD's water resources.

System Integrity – Funding Delta levee maintenance and upgrade projects in partnership with local reclamation districts to improve the security of EBMUD's Mokelumne Aqueducts at several river crossings in the Delta.

Drinking Water Quality Protection – Joining with USEPA and community organizations in the *Partnership for Safe Water* program to improve monitoring and

treatment efficiency in order to control the presence of protozoa such as *Crytosporidium* in drinking water.

EBMUD's Contributions to CALFED

Each of the six elements of EBMUD's comprehensive integrated water supply program contributes to the CALFED solution. Implementation of EBMUD's fishery management plan for the lower Mokelumne River has yielded a consistent increase in the number of fall-run chinook salmon spawners, which contributes to CALFED's Ecosystem Restoration Program goals. Through increased instream flows, EBMUD also provides additional Delta inflow at no cost to the State Water Project or Central Valley Project export interests. These flows have been acknowledged through the Mokelumne River Memorandum of Understanding (MOU) to represent EBMUD's reasonable contribution to Delta water needs. EBMUD's existing and proposed water conservation and reclamation programs will continue to reduce customer demand. Additionally, EBMUD's mandatory customer rationing policy during drought further reduces EBMUD's water supply needs and thus overall demand on the CALFED Bay-Delta system. EBMUD's proposed American River Project, and use of its CVP contract, to enhance water supply reliability in combination with the other EBMUD programs is balanced, similar to CALFED's approach. This Project also provides for potential development of conjunctive use storage and collateral benefits to other CALFED stakeholders.

The implementation of the American River Project and EBMUD's Water Supply Management Program helps resolve several CALFED water resource management issues. Specifically, EBMUD's integrated resource program:

- Creates opportunities to satisfy regional water supply needs of several communities in the CALFED solution and problem areas through a convergence of interests;
- Offers significant potential to develop conjunctive use storage through wet year banking, transfers, and exchanges;
- Avoids shifting significant negative impacts within the Bay-Delta to other regions or resources of California, a key CALFED criterion;
- Integrates partnership opportunities with water user and environmental interests to protect the aquatic resources in the Mokelumne River and assists in meeting CALFED's Ecosystem Restoration Program Plan goals for the Mokelumne River;
- Expands aggressive water conservation and recycling programs to reduce water demands on the Bay-Delta system;

- Incorporates up to 25% mandatory customer rationing during droughts to further reduce EBMUD's water supply needs and contributes to CALFED's water use efficiency program;

- Reduces acid mine drainage into the Bay-Delta watershed through EBMUD's partnership with the Corps of Engineers, USEPA, and local interests to implement the Penn Mine remediation project on the Mokelumne River;

- Strengthens and maintains Delta levees through a $42.8 million seismic upgrade for the Mokelumne Aqueducts and $8-10 million levee maintenance/upgrade program in partnership with Delta reclamation districts.

EBMUD's Comments on the CALFED Draft PEIS/R

EBMUD's comments on the CALFED Draft PEIS/R are summarized below and further expanded upon and described in Attachments A and B of this letter.

1. The CALFED Draft PEIS/R does not adequately address the potential impacts from the proposed actions in the program alternatives on Mokelumne origin salmon and steelhead. Including the Eastside tributaries in the San Joaquin River Region further exacerbates this problem. Most of the potential impacts in the Draft PEIS/R are stated in terms of impacts on San Joaquin or Sacramento fisheries resources. A separate assessment, including identification, monitoring and mitigation of impacts on the Mokelumne River, needs to be made for the Eastside tributaries given their location relative to the CALFED conveyance systems through the North and South Mokelumne Forks. This assessment must be undertaken to assure that impacts are not simply redirected.

2. The combination of increased export capacity under the South Delta Improvements and Joint Point of Diversion will have an impact on Mokelumne origin salmon. CALFED's Final PEIS/R needs to present an assessment of potential impacts and/or offer an adaptive management strategy to monitor and assess impacts, over time, on fall-run chinook salmon adults and juveniles migrating to and from the Mokelumne River. Such a strategy should incorporate appropriate mitigation, such as operational changes when Mokelumne fish are threatened.

3. The salmon restoration gains in the Mokelumne may be jeopardized by the operation of a Hood diversion. EBMUD is very concerned that the operation of the screened intake at Hood, the potential channel from Hood to the Mokelumne and Cosumnes Rivers, and the enlargement of the South Fork Mokelumne River to increase conveyance will negatively impact all life stages of the fall-run chinook

salmon that currently utilize that corridor for migration to and from the Cosumnes and Mokelumne Rivers. In addition, the proposed Joint Point of Diversion, in combination with a diversion at Hood, will likely increase the potential for indirect mortality of Mokelumne River chinook. The CALFED Draft PEIS/R does not adequately address potential impacts from the proposed actions in the program alternatives on Mokelumne origin salmon and steelhead. For both the Hood diversion and the Joint Point of Diversion, mitigation measures must first be identified and implemented to preserve the gains made in restoring the Mokelumne fishery.

4. As the Phase II Report lacks the necessary detail for a fair assessment of the Stage 1 actions, it should be updated in draft form prior to the Final PEIS/R when more information is available. In particular, CALFED's Water Management Strategy and regulatory compliance plan (for the Endangered Species Act and Clean Water Act §404) must be further elaborated.

   As a Record of Decision is developed and program elements are described in further detail, EBMUD reserves the right to comment on these elements. For instance, if in-Delta storage projects are studied for Stage 1 or long-term implementation planning, impacts on inmigration of fall run chinook adults and outmigration of fall run chinook salmon fry must be evaluated and adequately mitigated.

5. CALFED must ensure that any actions affecting the levees in the Delta will not have any adverse unmitigated impacts on the Mokelumne Aqueducts or the levees that protect them.

6. EBMUD urges CALFED agencies to pursue a coordinated decision process that acknowledges the linkages between CALFED, CVPIA, and Trinity River Restoration activities. The decisions regarding these three programs must be linked to ensure maximum coordination. The CVPIA and Trinity River Restoration activities have the potential to constrain water supplies, and these constraints need to be addressed by CALFED to ensure adequate water supplies for M&I users.

7. EBMUD supports the goals of CALFED's Ecosystem Restoration Program (ERP). CALFED should be commended for developing the Comprehensive Monitoring, Assessment, and Research Program, and for acknowledging the necessity for good science in decision making. CALFED must ensure that the proposed Scientific Review Panel remains independent from political and bureaucratic influence.

8. CALFED's finance plan is based in part on the principle that the beneficiaries of a given project or investment should pay for it. CALFED states that it will need to identify a procedure for estimating certain anticipated benefits (e.g., water quality and watershed) that cannot be easily measured, to estimate and allocate costs. A user fee would be the vehicle to collect such funds from beneficiaries. At other points, however, CALFED states that the user fee would pay for programs that confer "broad public benefits," and proposes a Delta watershed user fee modeled after the CVPIA Restoration Fund surcharge on contractors.

   If CALFED proposes a fee that reflects benefits to users, it must further develop its system of crediting for the many actions that water users have already taken to protect and enhance ecosystem values in the Bay-Delta. EBMUD has made a considerable contribution to the Mokelumne River ecosystem through the development of the Lower Mokelumne River Management Plan, which evolved to the Joint Settlement Agreement. CALFED should develop some mechanism to appropriately and fairly recognize prior direct investment by individual agencies for both flow and non-flow measures. Additional types of crediting mechanisms might include, for example, special access to grant resources or credits applied by the SWRCB.

9. There are many difficult issues that remain to be resolved in the BMP exemption review and certification processes for urban BMP compliance. Therefore, CALFED should not impose a mandatory program for urban conservation unless and until there is broad agreement among all stakeholders on the overall structure of the regulatory entity, the composition and authority of that body, and clear procedures for how water agency conservation programs will be reviewed.

   The projected increases in residential water use efficiency presented in the CALFED Draft PEIS/R appear achievable, but somewhat optimistic given factors that may increase water use, such as accelerated population growth or new water-using technologies. CALFED should fund an effort to determine the real cost of water (perhaps variable according to season and geographic location) that incorporates all market externalities. This could provide a rational basis for determining the economically optimum level of state and federal funding for conservation and reclamation projects that are not locally cost-effective, but that might yield a regional or statewide benefit.

10. EBMUD supports CALFED's plans to develop conjunctive use projects in cooperation with local interests. EBMUD has worked with San Joaquin County interests on potential groundwater projects in that region, and believes that local stakeholders must have an active role in such efforts.

11. Any alternative program identified by CALFED must address the needs of urban water suppliers to provide the highest quality water reasonably achievable. For those agencies that currently have a high quality source of water, this quality should be protected and enhanced where feasible.

12. CALFED should support and encourage pending settlements in the Bay-Delta water rights proceeding because they are critical to advancing stakeholder support for the CALFED Bay-Delta program. The voluntary resolution of disputes through negotiated settlements in the allocation of responsibility for meeting Delta outflow requirements is an important element of the CALFED process.

EBMUD appreciates the opportunity to participate and provide input to CALFED in the development of a Final Programmatic Environmental Impact Statement/Environmental Impact Report. We look forward to seeing EBMUD concerns adequately addressed, and assisting CALFED in developing viable programs that address all the interests in the Bay-Delta watershed. Please contact Randy Kanouse at (916) 443-6948 if we can be of assistance.

Very truly yours,

Dennis M. Diemer

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General Manager

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Attachments

cc: EBMUD Board of Directors
Kirk Rodgers, USBR
CUWA